

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-20-90004

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

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MEMORANDUM OPINION

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(Filed: March 6, 2020)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”). For the reasons discussed below, the complaint will be dismissed.

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, after review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. § 352(b)(1)(A)(i)-(iii).

Complainant filed a pro se civil rights action in 2014, and the presiding District Judge dismissed the complaint.<sup>1</sup> On appeal, the Court of Appeals vacated the dismissal in part. In 2017, the matter was remanded and assigned to the Subject Judge. It appears that the Subject Judge is attempting to locate pro bono counsel to represent Complainant, although counsel has not been located to date.

In 2018, Complainant filed a second pro se civil rights action that also was assigned to the Subject Judge. The Subject Judge dismissed the matter without prejudice because Complainant did not pay the filing fee and did not move for leave to proceed *in forma pauperis*. Complainant appealed the dismissal, but the appeal also was dismissed for failure to pay the filing fee.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge is “trespassing on my matter via the institution of public policy in a purely private matter and disregarding the judicial duty to protect and enforce equitable rights as contradistinguished from legal rights . . . in so doing disregarding binding Supreme Court precedent as well as the facts of the matter.”<sup>2</sup> Among other things, it appears that

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<sup>1</sup> The presiding District Judge, who is not a named Subject Judge of this complaint, has passed away.

<sup>2</sup> Complainant repeatedly directs the Court’s attention to a complaint of judicial misconduct that he apparently filed with the Federal Circuit. This Court does not, however, have access to confidential materials filed in that out-of-Circuit administrative proceeding.

Complainant's legal mail has been sent to an incorrect address, an error that Complainant attributes to the Subject Judge.<sup>3</sup>

It seems that these allegations are largely intended to dispute the merits of decisions and rulings that the Subject Judge rendered in Complainant's two civil proceedings. Allegations disputing the merits of judicial rulings do not, however, constitute cognizable misconduct under the Judicial Conduct and Disability Act. "Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations are not cognizable as misconduct because the "misconduct procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges' rulings." *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). Accordingly, Complainant's non-cognizable allegations are subject to dismissal. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

To the extent Complainant's allegations are not based solely on his disagreement with the merits of the Subject Judge's decisions and rulings, they are baseless. The record

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<sup>3</sup> In addition, Complainant alleges that he is wrongfully being held in segregated confinement and is being deprived of legal materials. Such allegations concern actions by prison staff. Because such individuals are not federal judges and therefore are not subject to the Judicial Conduct and Disability Act, *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, allegations concerning actions by prison staff will not be addressed in this opinion.

reveals no evidence to support Complainant's belief that the Subject Judge has caused Complainant's mail to be sent to an incorrect address.<sup>4</sup> Accordingly, Complainant's remaining allegations are subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

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s/ D. Brooks Smith  
Chief Judge

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<sup>4</sup> Service of court documents is a responsibility of District Court Clerk's Office staff, not federal judges. Such staff members are not federal judges and therefore are not covered by the Judicial Conduct and Disability Act. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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ORDER

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(Filed: March 6, 2020)

PRESENT: SMITH, *Chief Judge*.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaint brought pursuant to 28 U.S.C. § 351 is hereby dismissed under 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

This order constitutes a final order under 28 U.S.C. § 352(c). Complainant is notified in accordance with Rules 11(g)(3) and 18, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, of the right to appeal this decision by the following procedure:

Rule 18(a) Petition. A complainant or subject judge may petition the Judicial Council of the Third Circuit for review.

Rule 18(b) Time. A petition for review must be filed in the Office of the Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, and in an envelope marked "Misconduct Petition" or "Disability

Petition.” The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with “I hereby petition the judicial council for review of . . .” and state the reasons why the petition should be granted. It must be signed. There is no need to enclose a copy of the original complaint.

The full text of the *Rules for Judicial-Conduct and Judicial-Disability*

*Proceedings* is available from the Office of the Circuit Executive and on the Court of

Appeals’ internet site, [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov).

s/ D. Brooks Smith

Chief Judge

Dated: March 6, 2020